

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KIRK WATERS,

Petitioner(s),

vs.

WARDEN, NOBLE CORRECTIONAL
INSTITUTION,

Respondent(s).

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Case Number: 1:07cv758

District Judge Susan J. Dlott

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Hogan. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on July 2, 2008 a Report and Recommendation (Doc. 10). Subsequently, the petitioner filed objections to such Report and Recommendations (Doc. 13).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Accordingly, petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DENIED** with prejudice.

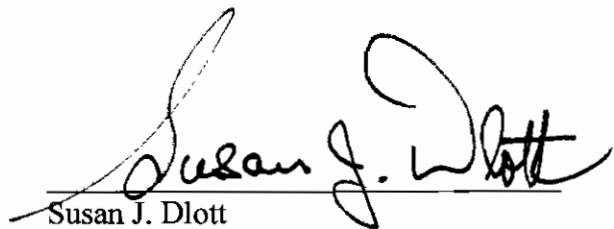
A certificate of appealability will not issue with respect to the claims alleged in Grounds One through Four, Seven through Nine and Eleven of the petition, which this Court has concluded are barred from review on procedural statute of limitations grounds, as well as the portion of Ground Fifteen which is deemed barred from review on procedural waiver grounds,

because “jurists of reason would not find it debatable as to whether this Court is correct in its procedural ruling[s]” under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). A certificate of appealability also will not issue with respect to the remaining claims alleged in Grounds Five, Six, Ten and Twelve through Fifteen of the petition, which have been addressed on the merits herein, because petitioner has not made a substantial showing that he has stated “viable claims[s] of the denial of a constitutional right” or that the issues presented are “adequate to deserve encouragement to proceed further.” *See Slack*, 529 U.S. 473, 475 (2000) (citing *Barefoot v Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. §2253(c); Fed. R. App.P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation will not be taken in “good faith,” and therefore **DENIES** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

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Susan J. Dlott
United States District Judge